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IN THE

SUPREME COURT OF THE UNITED STATES

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION,
Petitioner,

vs.

MARJORIE SHOAF DUSKIN,
Executrix of the Last Will and Testament of Delmar D. Duskin, Jr., Deceased,
Respondent.

No. 239

REBUTTAL ON BEHALF OF PETITIONER.

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Of Counsel.

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Believing that it will relieve the Court of the necessity of referring to record citations, petitioner admits the accuracy of all the statements contained on page three of respondent's brief. Petitioner contends that those facts emphasize the necessity for contracts such as the one here under consideration.

Petitioner believes that the argument advanced on page nine of respondent's brief may be unintentionally

misleading. The excerpt from Section 329 of the Alabama Employer's Liability Act does not accurately reflect the meaning of that section. The section only provides that acceptance of insurance and other relief benefits under a contract of employment does not constitute a bar to recovery. For the Court's convenience we copy it in full.

> "Sec. 329. **Insurance benefit no bar to recovery.**— No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee; but upon the trial of such action against any employer, the defendant may set off therein any sum he has contributed toward any such insurance, relief, benefit, or indemnity that may have been paid to the injured employee, or in case of death, to his personal representative." (R. pp. 17-18).

The true construction of the above section appears in the opinion of the District Judge. (R. p. 37).

Respondent's contention that the above section of the Employer's Liability Act expresses the public policy in Alabama entirely overlooks the fact that long after the passage of the Employer's Liability Act Alabama enacted a Workmen's Compensation Statute. The Supreme Court of Alabama has held that it supersedes the Employer's Liability Act in all cases to which the Compensation Act is applicable. **Stegall v. Sless-Sheffield Steel and Iron Co.,** 205 Ala. 100, 87 Sou. 787 (1920). The respective dates of the statutes are stated in the opinion.

The Court of Appeals concurred with the District Judge in holding that the contract was not contrary to the laws or the public policy of Alabama. (R. p. 67).

Respectfully submitted,

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